Opinion of the United States District Court for the Eastern District of Michigan

(Filed April 30, 1954)

This is an action to cancel citizenship of defendant on the grounds of both fraud and illegality, brought under Section 338(a) of the Nationality Act of 1940, 54 Stat. 1158. Proof of either charge will suffice.

Defendant acquired his citizenship under the Act of June 29, 1906 (34 Stat. 596) as amended by Act of March 2, 1929, Chap. 536, Sec. 6(b) (45 Stat. 1513), which provides in part, subsection "Fourth" (3):

> "Fourth. No alien shall be admitted to citizenship unless * * * and (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

This requirement remains unchanged in the current Act, 8 USC 1427(a).

Findings of Fact

The facts are these:

Defendant came to America in the year 1921, shortly after the first world war and soon took up his home in Detroit. In 1929, he moved to Brooklyn, New York, and on or about May 18th, 1931, made application for citizenship. He also appeared before a preliminary examiner to be interrogated concerning the statements made by him on his application. One of the questions on that application was:

> "have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?"

Defendant's answer to this question was "No." While the handwriting in the main body of the application was clearly not defendant's, the application was signed by him. To show that this answer to the quoted question was false, the government has proven that beginning with June 25, 1923, up to and including the day he was naturalized on August 18, 1931, defendant had been arrested at least fifteen times and convicted of two misdemeanors—disturbing the peace on June 25, 1923, and frequenting a gambling place on August 3, 1927.

Shortly after defendant became an American citizen he returned to Detroit, where he has resided ever since.

On July 19, 1946, defendant through an attorney, asked the Superintendent of Police in Detroit to remove his record except for the two misdemeanors, since "no convictions occurred subsequent to" the other arrests. This was as provided by Michigan Statute, CL 1929, Sec. 569 (MSA Sec. 4, 463).

Following is the list of arrests and their dispositions, which occurred prior to and during 1931, as submitted by defendant's then attorney to the Detroit Police Department Superintendent at the time defendant's record was expunged:

6/25/23	Disc. peace	$25.00 or 30 days Heston
3/24/24	Fel. asslt.	Dismissed
1/16/25	Viol. Dyer Act	TOT. U. S. Marshal
8/ 6/25	R. A.	Dismissed
3/30/26	C. C. weapons	Discharged
4/13/27	CCW Capias	Discharged
8/ 2/27	Freq. Gamb. pl	$10.00 or 10 days
2/19/29	Murder	Discharged
3/15/29	U. S. Immigration	Discharged
10/28/31	Murder	Nolle Prossed
12/10/31	Fugitive	TOT. Wyandotte, Mich PD

Not included in the above list are the following arrests, which were proved by the government at the trial:

3/13/24	Murder	Dismissed on writ 3/15/24
7/26/24	Robbery Armed	Dismissed by Super. 7/29/24
9/25/24	Robbery Armed	Dismissed by Super. 9/26/24
11/ 7/24	Arrested on Investigation—Released on bail—bail forfeited—no disposition	
1/13/25	Robbery Armed	Dismissed by Super. 1/16/25
4/26/25	Robbery Armed	Dismissed by Super. 4/28/25

It will be noted that the first nine charges listed by defendant at the time he expunged his record include felonious assault, violation of the Dyer Act, robbery armed, carrying concealed weapons, murder and violation of the immigration laws. Defendant was also finger-printed. The arrests not so listed by defendant include murder and robbery armed and the arrest on "investigation" on November 7, 1924, was in Rochester, New York. At the trial defendant admitted being arrested in Rochester, New York and posting bond—"And I haven't heard from it since."

The robbery armed charge of August 6, 1925, was in Detroit, and was not dismissed until September. In this matter defendant put up bond and as he had done before hired a prominent attorney to represent him.

The arrest for murder in February, 1929, terminated the same day. The one on March 13, 1924, was dismissed on writ March 15, 1924.

During the course of the trial the government also sought to prove other arrests taking place subsequent to the date of naturalization under *Luria* v. *U. S.* 231 U. S. 9; *U. S. ex rel. Harrington* v. *Schlotfeldt,* 136 F. 2d 935; *Baumgartner* v. *U. S.,* 138 F. 2d 29 (reversed by the Supreme Court, 322 U. S. 665 on other ground); and *Turlej* v. *U. S.* 31 F. 2d 696. However, this court, on objection by defendant, refused to permit any evidence concerning defendant's alleged improper actions after his naturalization, except to show that on March 9, 1931, while his application for citizenship was pending in Brooklyn and before he was naturalized, an indictment for murder had been returned against him in Detroit and also that he was charged as a

fugitive from justice on October 10, 1931. The indictment was for the same murder for which defendant was arrested on February 19, 1929 before going to New York to live. This indictment was the basis for arrest for murder on October 28, 1931, after defendant was naturalized and had returned to Detroit. He was placed on $10,000.00 bond for this charge, but the case was nolle prossed January 20, 1932.

There is no question or doubt in this court's mind but that defendant had been arrested several times when he made his application for United States citizenship. As a matter of fact, defendant admitted the two arrests followed by convictions and also some of the other arrests at trial. He did not deny the others, but was very vague and stated that he "did not remember" them. He was also identified in many of the charged arrests by several police officers as the man they had arrested. The proof as to each of these arrests is "clear, convincing and unequivocal." *Schneiderman* v. *U. S.*, 320 U. S. 118. Other findings of fact are commingled with the conclusions of law.

Conclusions of Law

The first question relates to the alleged fraud. Did the defendant intentionally make any false statements? It is his position that he made out his application for citizenship at one of the store offices opposite the Federal Court in Brooklyn, which, of course, would not be unusual. He further stated that he told the person who made out his application all about his arrests, but that this person informed him that nevertheless his answer to the question should be "no." Defendant testified:

> "So he asked, was I ever arrested. I say 'yes'.
>
> So he told me, 'For what?'
>
> So I told him, I said, 'I was arrested for investigation, and I pay a fine of $25, fine for disturbing the peace.'

So he told me, he said, 'Well, that is $25 fine for disturbing the peace. That is nothing. That is a misdemeanor.'

He said, 'The others—did you ever serve time for anything'?

I said, 'No.'

Well, he said 'That is all. As long as you didn't serve no time, that is not necessary.' "

It is defendant's position that he failed to answer the question truthfully because the man who helped him fill out his application informed him that if he didn't serve time the arrest didn't count. This court does not believe that latter statement. On the contrary, we believe that he deliberately falsified his position with the intent of misleading the examiner, and that such false statements were material to the issue, because under the numerous authorities, *Knauer* v. *United States*, 328 U. S. 654; *Del Guercio* v. *Pupko*, 160 F. 2d 799; *U. S.* v. *DeFrancis*, 50 F. 2d 497; *U. S.* v. *Saracino*, 43 F. 2d 76; *U. S.* v. *Charnowola*, 109 F. Supp. 810 and also the rules and regulations in force at the time defendant was examined governing interrogation by the examiner, which provides in part:

"The question of possible arrests must be thoroughly covered. If the applicant has been arrested or charged with a violation of any law or ordinance all the facts will be ascertained including information as to whether conviction resulted."

An applicant for citizenship must present all of the facts and have no guilt or fraud in his heart. He must, to use a common expression, "come clean." See *U. S.* v. *Zgrebec*, 38 F. Supp. 127.

In *Knauer* v. *United States*, *supra*, fraud is defined as connoting "perjury, falsification, concealment, misrepresentation." Certainly this defendant concealed the fact

that he had been arrested. He "falsified" and "misrepresented" and was also probably guilty of perjury. *Gaglione* v. *U. S.* 35 F. 2d 496. If he had revealed that he had been arrested it does not necessarily follow that he would have been denied citizenship, but this was information that the examining officers were charged by law with obtaining and to which they were entitled. The seriousness of the offense and the materiality of any arrest or conviction would be then up to the examining officers, and if they wrongfully refused petitioner naturalization he could then appeal to the courts.

We also hold and find that the government examiner relied upon defendant's misrepresentations.

It seems to be the position of defendant that his false statement was immaterial, but when we follow the reasoning of the court in *Del Guercio* v. *Pupko, supra,* to its logical conclusion, we must hold that it was very material. True, the Del Guercio case was an application for citizenship where the burden of proof is admittedly different than in a de-naturalization action, but it involved an identical type of misrepresentation as in the case at bar and the court held that where the petitioner, in his application for citizenship, had falsely denied being arrested or charged with violations of any law, that such false statement of itself involved "moral turpitude and exhibits the unfitness of the applicant for the high privilege of citizenship." A fortiori, if an applicant is refused citizenship because the government caught him in making a false statement in his application for citizenship, should any naturalized person be permitted to keep his citizenship as a reward for having been successful in his deceit? We cannot follow that kind of reasoning. Since the information concealed was asked, and a truthful answer might possibly have prevented defendant from obtaining his citizenship in the first instance, the misrepresentation was clearly material.

The preliminary examiner who had interrogated defendant concerning the answers he had given in his written application for citizenship was a witness at the trial. He identified certain writing and marks on defendant's application having been made by witness. He testified that the check marks which appeared on the application next to several of the questions, including the question about arrests, meant that he had questioned the applicant sufficiently to determine that the applicant had answered the written questions the way he wanted to answer them; that he had questioned the applicant as to the questions asked on the application, in addition to supplementary questions to clarify any given situation in the application. This witness also identified his writing of the letters "NCR" and "RE" on the back of the application and testified that these notations meant "No Criminal Record" and "Reads English" respectively.

Stress is placed by defendant on whether or not this witness' testimony was sufficient since he evidently did not remember Mr. Corrado personally. Mr. White, the preliminary examiner, examined defendant back in 1931, and has not been connected with the government since 1933. He couldn't be expected to remember examining this individual. If he had said that he actually did remember this particular person we doubt very much if the court would have believed him without some exceptional proof as to why, out of the thousands of petitioners he had examined as examiner, he was able to remember this one. The strength of White's testimony lies in the fact that he just testified to things he did remember.

We are also confronted with the following well settled law:

Under the 1929 regulations pre-petition examinations had to be under oath, *United States* v. *Obermeier*, 186 F. 2d

243 and the examiner obliged to check the answers by inquiry. In the absence of any proof to the contrary there is a strong assumption that public officials have properly discharged their duties. *Lewis* v. *United States*, 279 U. S. 63; *Stone ex rel. Colonna* v. *Tillinghast*, 32 F. 2d 447; *Daskaloff* v. *Zurbrick*, 103 F. 2d 579. Defendant himself testified that if he was not mistaken he believed he was made to swear—made to raise his hand. Hence we are forced to conclude that White asked him the necessary questions concerning the answers on defendant's petition and that defendant carried on the deceit.

We hold that defendant was guilty of fraud and we further hold that he would and should be deprived of his citizenship for having obtained it illegally. His very act in falsifying the facts indicates that at the time he did so he was not "a person of good moral character" or "well disposed to the good order and happiness of the United States." *Stevens* v. *United States*, 190 F. 2d 880; *United States* v. *Etheridge*, 41 F. 2d 762; *Del Guercio* v. *Pupko*, *supra*. See *United States* v. *Accardo*, 113 F. Supp. 783, wherein the court said:

> "How can a person claim to be of 'good moral character' or 'well disposed to the good order and happiness of the United States' at the very time he is seeking to defraud the United States, in a matter of moment both to him and to the country?"

The decision of the District Judge was adopted by the Court of Appeals, Third Circuit, in a per curiam decision, 208 F. 2d 632.

We are loath to take away the citizenship of anyone but in this case there are several reasons why this court has no faith in the testimony given by defendant except that he probably did have someone else make out the application for him. We disbelieve him because:

(a) His demeanor and evasion while on the witness stand did not impress us;

(b) Even after the letter from his then attorney to the Detroit Police Superintendent asking that certain records be expunged, had been introduced defendant did not admit nor deny some of those arrests, but said from the witness stand that he "didn't remember"; and he took the same position regarding some of the arrests not listed in that letter; (This was his attitude regarding the March 13, 1924 arrest for murder, and we think it altogether improbable that one would not remember such an arrest.)

(c) The defendant was not an "ignorant foreigner"—an impression sought to be created;

(d) His shifting of his residence to New York came about the same time as the murder for which he was indicted in Detroit in 1931; and

(e) Adding two and two together it is apparent to this court from his own testimony that defendant went to New York to make his application for citizenship because of his long police record in Detroit.

For the above reasons we hold that the government has proven its case and that defendant's citizenship should be revoked on both the grounds of fraud and illegality.

(S.) Frank A. Picard,
United States District Judge.

Dated: April 30, 1953.

Judgment

At a session of said Court held in the Federal Building, at Detroit, Michigan, this 10th day of May, 1954

Present: The Honorable Frank A. Picard United States District Judge

Upon the records and files of the above action from which it appears that the summons and complaint have been duly

served upon the defendant above named, and from a full hearing in open court, and in accordance with an opinion filed on April 30, 1954, in which the Court held that the defendant procured his naturalization fraudulently and illegally, and upon motion of Fred W. Kaess, United States Attorney, by Dwight K. Hamborsky, Assistant United States Attorney, in and for the Eastern District of Michigan, Southern Division.

It is hereby ordered, adjudged, and decreed that the order of the United States District Court of the Eastern District of New York, at Brooklyn, New York, entered on August 18, 1931, admitting the defendant Pietro Corrado as a citizen of the United States of America, be and the same is hereby revoked, set aside, and declared void, and that the Certificate of Naturalization issued by virtue of said order of August 18, 1931, be and the same is hereby cancelled and declared null and void; and

It is further ordered, adjudged and decreed that the defendant shall deliver and surrender to the Clerk of the United States District Court for the Eastern District of Michigan the original Certificate of Naturalization of the defendant.

It is further ordered, adjudged, and decreed that the Clerk of this Court transmit to the Attorney General, Department of Justice, Washington, D. C., a certified copy of the judgment, order and decree, together with the original Certificate of Naturalization of the defendant, if in his possession; and

It is further ordered, adjudged, and decreed that the defendant Pietro Corrado be and he is hereby forever restrained and enjoined from setting up or claiming any rights, privileges, benefits, or advantages whatsoever under said order of August 18, 1931, or under the Certificate of Naturalization issued by virtue of said order.

It is further ordered, adjudged, and decreed that the

Clerk of this Court shall also transmit a certified copy of this order to the Clerk of the United States District Court for the Eastern District of New York at Brooklyn, New York.

(S.) FRANK A. PICARD,
United States District Judge.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12349

PETER CORRADO, a/k/a Pietro Corrado, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

Appeal from the United States District Court for the Eastern District of Michigan
Decided December 16, 1955

Before Simons, Chief Judge; Martin and McAllister, Circuit Judges

MARTIN, *Circuit Judge:*

Appellant became a naturalized citizen of the United States by an order of the United States District Court for the Eastern District of New York, entered on August 18, 1931. This is an appeal from the judgment of the United

States District Court for the Eastern District of Michigan, revoking the order entered in the Eastern District of New York and canceling the certificate of naturalization issued pursuant to it. Appellant's citizenship was canceled because of fraud and illegality in its procurement.

Appellant, an Italian, came to the United States in 1921 and soon thereafter became a resident of Detroit, Michigan. On December 29, 1927, at Detroit, he declared his intention to become an American citizen. In June of 1929, he moved to Brooklyn, New York; and, on or about May 18, 1931, he applied for citizenship by petition to the United States District Court at Brooklyn, New York. On the printed application furnished him were numerous questions. This application shows that, after the question numbered 29: "Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?" was written the word "no". The application was signed by appellant above a printed certification that the statements in it were true to the best of the knowledge and belief of the applicant. The answers in writing to the questions asked in the application were not in the handwriting of appellant, but the application was signed by him.

The answer to the quoted question was false, for it was shown at the trial that, from June 25, 1923, to August 18, 1931 (the date of his naturalization), appellant had been arrested at least fifteen times and had been convicted of two misdemeanors: disturbing the peace in 1923; and frequenting a gambling place in August of 1927.

Very soon after his naturalization, Corrado returned and became a permanent resident of Detroit. Pursuant to his right under Michigan law, he formally requested the Superintendent of Police in Detroit to expunge from his record the list of his arrests, with the exception of the two misdemeanors upon which he was convicted, inasmuch

as he had not been convicted on any other charge for which he had been arrested. The attorney for appellant submitted to the Police Superintendent a record of nine arrests which, upon application, were expunged. These arrests included one for murder, which was discharged; another, two years later, for murder, which was nolle prossed; other arrests were upon charges of felonious assault; armed robbery; concealed weapons (two arrests); violation of the Dyer Act; violation of United States Immigration laws; and he had also been arrested as a fugitive from justice.

The trial judge listed six additional arrests, which had not been expunged. These arrests were established by the Government, by evidence introduced at the trial: one for murder; four for armed robbery; and one "on investigation." The United States District Court rejected the Government's offer to prove other arrests subsequent to the date of appellant's naturalization, and denied the admission of any evidence concerning his alleged improper actions after naturalization, with two exceptions. Evidence was admitted to the effect that, while his application for citizenship was pending in Brooklyn and before it was granted, an indictment had been returned against him in Detroit wherein he was charged with the same murder for which he had been arrested on February 19, 1929, before he left Detroit to live in New York. The Government was also permitted to show that, on October 10, 1931, appellant was charged with being a fugitive from justice.

In relation to his false answer to the question as to whether he had ever been arrested, Corrado made the excuse—which was not accepted by the trial judge—that the person who filled out his application in a store office opposite the Federal Building in Brooklyn had informed him that, because he had been convicted only for misdemeanors and his other arrests had not resulted in convictions, it was proper that he should answer "no" to

the question of whether or not he had ever been arrested.

The trial judge, in his opinion holding that appellant was guilty of fraud in the procurement of his citizenship, stated that he did not believe the testimony of appellant for numerous reasons, namely: his demeanor and evasion on the witness stand; his convenient memory; his obvious intelligence instead of feigned ignorance; his shifting of residence from Detroit to New York around the time of his indictment for murder at Detroit; and his making of application for citizenship in New York, evidently because of his long police record in Detroit.

We have in mind the fact that, at the time of appellant's examination in New York, the preliminary examiner had noted upon the back of the application that it was being referred to Detroit for the taking of depositions with respect to appellant during the years from March 1, 1926, to June 14, 1929, a period of more than three years, during which he had resided in Detroit immediately before going to Brooklyn, New York, at which place he had resided for a year before filing his application for citizenship. While it appears that depositions were later taken in Detroit for that period, there is no evidence in the case as to what these depositions contained.

The preliminary examiner who had questioned appellant concerning the answers in his application for citizenship testified at the trial. The purport of his testimony was that his check marks on the application indicated that Corrado had answered the questions as he desired to answer them. The examiner pointed out that the letters "NCR" which he had placed on the back of the application meant "no criminal record"; and that the letters "RE" meant "reads English." The trial judge indicated strongly that he believed the testimony of the preliminary examiner. The opinion of the trial judge on the credibility of witnesses is, of course, not reviewable on appeal.

The brunt of appellant's complaints on this appeal is that, unless the Government could show that he would have been denied citizenship on the unproven charges made in the warrants of arrest, his citizenship should not be canceled now for his deception in the statement that he had never been arrested, especially in view of the fact that his only convictions were for misdemeanors, or minor offenses. He throws in the proposition that fraudulent procurement of naturalization must be established by clear and convincing evidence, which, he says, has not been done in this case. *Baumgartner* v. *United States*, 322 U. S. 665; *Schneiderman* v. *United States*, 320 U. S. 118, 125; *Knauer* v. *United States*, 328 U. S. 654. Appellant stresses as authority *United States* v. *Kessler*, 213 F. (2d) 53 (C. A. 3), wherein it was held that an applicant's denial in her petition for naturalization that she had ever been arrested was not ground for cancellation of her naturalization certificate, where the Government stated that she had been arrested 17 times. The facts were, however, that all seventeen of her arrests had been illegal and invalid, inasmuch as the activity for which she was arrested consisted merely of peaceful picketing. She stated that she had answered "no" to the question concerning her arrests for the reason that she had committed no crime, had done nothing wrong, had no intention of lying; and that she did not understand the purport of the question at the time she answered it. The *Kessler* case presented a very different situation on the whole from that in the case at bar, where appellant had been charged with such grave offenses as murder and armed robbery. He could not reasonably have thought that the Government would not be interested in investigating the facts concerning such arrests.

A later case from the Third Circuit, *United States* v. *Anastasio*, — F. (2d) — (C. A. 3), decided September 19, 1955, and cited by appellant, is not in point for the reason

that, there, as conceded by appellant in its supplemental brief, the Government was fully aware of appellant Anastasio's arrest record prior to his naturalization. In an earlier case, *United States* v. *Saracino*, 43 F. (2d) 76 (C. A. 3), the Court of Appeals for the Third Circuit reversed the United States District Judge for refusing to cancel a certificate of naturalization, where the applicant had denied that he had been arrested and convicted for assault and battery with intent to kill, prior to his naturalization. The court directed that the naturalization certificate be canceled for the fraud of the applicant.

In *United States* v. *Accardo*, 113 F. Supp. 783 (D. C. N. J.), the United States District Court revoked naturalization, for the reason that false statements and concealment of material facts by the alien in relation to his criminal record justified revocation of his naturalization, on the ground of fraud, or on the ground that the order and certificate of naturalization were illegally procured. The United States Court of Appeals affirmed on the "very full and thoroughly considered opinion of the district judge." *United States* v. *Accardo* [Dec. 7, 1953], 208 F. (2d) 632 (C. A. 3).

Denaturalization for fraud and illegality in the procurement of citizenship is provided for in section 338(a) of the Nationality Act of 1940. Admittedly, a high standard of proof is required of the Government in a denaturalization case. To successfully attack a naturalization judgment, fraud upon the part of the naturalized citizen in procuring his naturalization must be proved by clear and convincing evidence. In *Knauer* v. *United States*, 328 U. S. 654, it is made plain that an appellate court must observe Civil Procedure Rule 52(a), which requires that due regard be given to the determination by the trial judge of the credibility of witnesses. The trial judge here stated clearly that he did not believe the testimony of appellant. He stated his belief

to be that appellant "deliberately falsified his position with the intent of misleading the examiner"; and that these false statements were material to the issue. The trial judge expressly found that the Government had relied upon the appellant's misrepresentation concerning the material matter of his arrests.

Upon analysis, the issue is not whether naturalization would have been denied appellant had he revealed his numerous arrests, but whether, by his false answers, the Government was denied the opportunity of investigating the moral character of appellant and the facts relating to his eligibility for citizenship. How could any Government official or witness say whether or not citizenship would have been denied appellant from an investigation of the various causes of his arrest, when no opportunity for investigation was afforded? His false statement upon the material matter in actuality caused no investigation to be made. To be awarded citizenship in the United States exacts the highest standard of rectitude. Our Government should be afforded full opportunity for investigation of the moral character and fitness of an alien who seeks to be vested with all the rights, privileges and immunities of a natural born citizen of the United States. Where fraud has been practiced by the alien in procuring citizenship, it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case. It will suffice to show that the applicant lied concerning a material fact which, if revealed, might have prevented his acquisition of citizenship.

In three denaturalization proceedings, heard together on appeal to this court from the Eastern District of Michigan, we affirmed the respective judgments of District Judges Levin, Thornton and Picard: all revoking naturalization. *Sweet* v. *United States*, *Chomiak* v. *United States*, and *Charnowola* v. *United States*, 211 F. (2d) 118 (C. A. 6). In

the *Sweet* case, Judge Levin said that the "testimony left no doubt that the defendant had concealed his history of Communist Party membership from the naturalization authorities and had thereby thwarted inquiry into his eligibility for naturalization." In the *Chomiak* case, Judge Thornton found convincing evidence that the denaturalized defendant had been a member of the Communist Party and, therefore, ineligible for citizenship; and that the defendant had procured his naturalization illegally. In the *Charnowols* case, Judge Picard found that the defendant in naturalization proceedings had not truthfully answered the question asked by the examiner as to whether he had ever been a Communist and, therefore, had obtained citizenship by fraud. This court stated in its per curiam opinion that the findings of fact of the judge in each of the cases were supported by substantial evidence and were certainly not clearly erroneous; and that the conclusions of law in each case were based upon logically correct reasoning, supported by highest authority.

In *United States* v. *Smith*, 62 F. (2d) 808, 812 (C. A. 7), where *habeas corpus* was denied in a deportation proceeding, Judge Evan Evans said: "What the officer would have discovered, or might have discovered, had the inspection not been thwarted is beside the question. The inspection contemplated was defeated. In legal effect there was no inspection." The same reasoning applies here.

In *Stevens* v. *United States*, 190 F. (2d) 880, 881 (C. A. 7), Chief Judge Major said: "We have no doubt but that a false statement knowingly made by an applicant for naturalization in the course of such proceeding would afford a proper basis for denying the application, and it is immaterial that the false statement knowingly made concerned violations which occurred previous to the five year period." Cf. *United States* v. *Etheridge*, 41 F. (2d) 762 (D. C. Ore.).

Upon the facts revealed in the record, heretofore outlined, and upon the basis of the foregoing reasoning and authorities, the judgment of the United States Dsitrict Court is affirmed.

Judgment

(Filed December 16, 1955)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

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